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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**BEFORE THE HONORABLE VINCE CHHABRIA, JUDGE**

IN RE FACEBOOK, INC., ) NO. 13-MD-2843 VC  
CONSUMER PRIVACY USER )  
PROFILE LITIGATION, ) TUESDAY, JULY 31, 2018  
\_\_\_\_\_  
 )  
 ) SAN FRANCISCO, CALIFORNIA  
 )  
 ) FURTHER CASE MANAGEMENT

**TRANSCRIPT OF TELEPHONIC PROCEEDINGS OF THE OFFICIAL ELECTRONIC**  
**SOUND RECORDING 1:38 P.M. - 2:06 P.M.**

**APPEARANCES:**

**FOR PLAINTIFF:**

KELLER ROHRBACK, LLP  
1201 THIRD AVENUE, SUITE 3200  
SEATTLE, WASHINGTON 98101  
BY: DEREK LOESER, ESQUIRE  
CARI LAUFENBERG, ESQUIRE

KELLER ROHRBACK, LLP  
801 GARDEN STREET  
SANTA BARBARA, CALIFORNIA 93101  
BY: CHRISTOPHER SPRINGER, ESQUIRE

BLEICHMAR FONTI & AULD, LLP  
555 12TH STREET, SUITE 1600  
OAKLAND, CALIFORNIA 94607  
BY: LESLEY E. WEAVER, ESQUIRE

(APPEARANCES CONTINUED)

**TRANSCRIBED BY:**

DIANE E. SKILLMAN, TRANSCRIBER

1  
2 **FOR DEFENDANT:**

3 GIBSON, DUNN & CRUTCHER  
4 200 PARK AVENUE  
5 NEW YORK, NEW YORK 10166  
6 BY: ORIN SNYDER, ESQUIRE  
7  
8

9 GIBSON, DUNN & CRUTCHER  
10 555 MISSION STREET, SUITE 3000  
11 SAN FRANCISCO, CALIFORNIA 94105  
12 BY: JOSHUA LIPSHUTZ, ESQUIRE  
13 KRISTIN LINSLEY, ESQUIRE  
14 CHRISTOPHER LEACH, ESQUIRE  
15  
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1 TUESDAY, JULY 31, 2018

1:38 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CASE NUMBER 18-MD-02843 IN RE  
4 FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION.

5 COUNSEL FOR PLAINTIFFS, PLEASE STATE YOUR APPEARANCES FOR  
6 THE RECORD.

7 **MR. LOESER:** GOOD AFTERNOON, YOUR HONOR. DEREK  
8 LOESER FROM KELLER ROHRBACK FOR THE PLAINTIFF.

9 **MS. WEAVER:** GOOD AFTERNOON. LESLEY WEAVER OF  
10 BLEICHMAR FONTI & AULD ALSO FOR PLAINTIFFS.

11 **THE CLERK:** AND FOR DEFENDANTS?

12 **MS. WEAVER:** NO, IT'S ALSO BLEICHMAR, FONTI & AULD.

13 (PAUSE IN THE PROCEEDINGS.)

14 **THE COURT:** HOW ABOUT THE DEFENDANTS?

15 **MS. LAUFENBERG:** CARI LAUFENBERG FROM KELLER ROHRBACK  
16 IS ALSO PRESENT.

17 **MR. SPRINGER:** CHRISTOPHER SPRINGER FROM KELLER  
18 ROHRBACK IS ALSO PRESENT FOR PLAINTIFFS.

19 **THE COURT:** ALL RIGHT. DEFENDANTS?

20 (PAUSE IN THE PROCEEDINGS.)

21 **MR. SNYDER:** ORIN -- ARE YOU THERE? DID YOU SAY  
22 DEFENDANTS? I'M SORRY, I DIDN'T EVEN HEAR.

23 YES, IT'S ORIN SNYDER, JOSH LIPSHUTZ, KRISTIN LINSLEY, AND  
24 CHRISTOPHER LEACH FROM GIBSON DUNN FOR DEFENDANTS.

25 **THE COURT:** OKAY. HI EVERYONE. AND SORRY TO KEEP

1 YOU WAITING A LITTLE BIT.

2 I WANTED TO MAINLY TALK ABOUT SCHEDULING FOR THE MOTION TO  
3 STAY DISCOVERY. I ALSO HAD A... ONE OTHER QUESTION ON MY  
4 MIND. MAYBE I'LL -- I'LL THROW IT OUT THERE BEFORE I FORGET  
5 ABOUT IT.

6 I WAS SORT OF SCRATCHING MY HEAD AS I WAS READING THROUGH  
7 THE COMPLAINTS IN ANTICIPATION OF OUR STATUS CONFERENCE FROM A  
8 COUPLE OF WEEKS AGO WONDERING WHY ANY OF -- ANY INDIVIDUALS AT  
9 FACEBOOK ARE NAMED AS DEFENDANTS. YOU KNOW, IT WASN'T CLEAR  
10 TO ME WHETHER THERE WAS ANY REAL REASON TO NAME ANY OF THE  
11 INDIVIDUALS AS DEFENDANTS, OR IF IT WAS A DECISION BY SOME OF  
12 THE PLAINTIFFS THAT WAS MORE, YOU KNOW, POLITICAL THAN  
13 ANYTHING ELSE.

14 BUT I'M -- I JUST WANTED TO MENTION THAT TO -- TO I GUESS  
15 MAINLY TO PLAINTIFFS' COUNSEL TO GIVE SOME CONSIDERATION TO  
16 THAT AS YOU'RE PREPARING TO FILE A CONSOLIDATED AMENDED  
17 COMPLAINT.

18 **MR. LOESER:** YOUR HONOR, THIS IS DEREK LOESER FOR  
19 PLAINTIFFS.

20 AND I'M NOT SURE IF YOU WANT US TO ADDRESS THAT QUESTION  
21 FIRST, BUT I CAN PROBABLY DO SO VERY BRIEFLY, WHICH IS THAT WE  
22 WILL GIVE THAT CONSIDERATION WHEN DRAFTING THE COMPLAINT.

23 **THE COURT:** YEAH. NO NEED TO DISCUSS IT NOW. IT'S  
24 JUST SORT OF A GUT, NOT EVEN GUT REACTION, JUST A QUESTION  
25 THAT JUMPED OUT AT ME THAT, YOU KNOW, I DON'T KNOW THE ANSWER

1 OBVIOUSLY.

2 HAVE YOU ALL HAD A CHANCE TO TALK ABOUT WHEN MIGHT BE THE  
3 BEST TIME TO TEE UP THE MOTION TO STAY DISCOVERY OR IS THAT  
4 SOMETHING THAT WE SHOULD JUST START TALKING THROUGH RIGHT NOW?

5 **MR. LOESER:** THIS IS DEREK AGAIN.

6 AND WE HAVE HAD ONE RELATIVELY BRIEF MEET AND CONFER. I  
7 WOULD SAY THAT THE PARTIES STILL HAVE A FAIR AMOUNT TO TALK  
8 ABOUT AND WE WERE HOPING THAT WE WOULD GET SOME GUIDANCE ON  
9 THIS CALL AND THAT MAY HELP SHAPE THOSE CONVERSATIONS.

10 **THE COURT:** OKAY. I HAVE A TENTATIVE FEELING ABOUT  
11 IT, BUT, YOU KNOW, I'M HAPPY TO HEAR WHAT YOU ALL HAVE TO SAY.

12 MY TENTATIVE FEELING IS THAT... AS I THINK I INDICATED, I  
13 THINK THAT SOME LIMITED DISCOVERY IS PROBABLY APPROPRIATE. WE  
14 WILL -- I WILL, OF COURSE, YOU KNOW, RESERVE JUDGMENT ON THAT,  
15 BUT MY TENTATIVE VIEW IS THAT SOME LIMITED DISCOVERY IS  
16 PROBABLY APPROPRIATE TO ALLOW THE PLAINTIFFS TO GET A LITTLE  
17 BETTER SENSE OF THE SCOPE OF THE, YOU KNOW, OF THE ISSUES AND  
18 THE ENTITIES OR PEOPLE INVOLVED.

19 SO, IN OTHER WORDS, YOU KNOW, WHO ELSE RECEIVED ACCESS TO  
20 FACEBOOK USER INFORMATION, KIND OF ON THE SAME TERMS AS  
21 CAMBRIDGE ANALYTICA AND WHAT WAS THE, YOU KNOW, WHAT DOES  
22 FACEBOOK KNOW ABOUT HOW THAT DATA WAS GOING TO BE USED OR  
23 INTENDED TO BE USED. AND I THINK THAT, YOU KNOW, THAT COULD  
24 BE, YOU KNOW, POTENTIALLY RELEVANT TO SOME OF THE STANDING  
25 ISSUES.

1 AND SO ON REFLECTION, YOU KNOW, I WAS THINKING ABOUT  
2 MR. SNYDER'S COMMENTS AT OUR LAST MEETING, YOU KNOW, ABOUT  
3 THE -- HOW THE DISCOVERY, YOU KNOW PROPOSED IN THE PLAINTIFFS'  
4 CASE MANAGEMENT STATEMENT IS ACTUALLY QUITE BROAD AND QUITE  
5 BURDENSOME. PERHAPS THAT'S RIGHT, BUT PERHAPS MORE NARROW  
6 DISCOVERY, AS I'VE JUST DESCRIBED IT, COULD BE APPROPRIATE.

7 AND MY GUT IS THAT WE OUGHT TO RESOLVE THE QUESTION  
8 WHETHER SUCH DISCOVERY IS APPROPRIATE SOONER RATHER THAN LATER  
9 BECAUSE IT WILL EFFECT, YOU KNOW, IT WILL POTENTIALLY EFFECT  
10 BRIEFING AND EFFECT THE PROCEEDINGS THAT YOU ALL ARE  
11 CONTEMPLATING OVER THE NEXT SEVERAL MONTHS.

12 SO I GUESS -- I WOULD BE TENTATIVELY INCLINED TO TEE IT UP  
13 FOR, YOU KNOW, BRIEF IT AND MAYBE SCHEDULE A HEARING IN  
14 SOMETIME IN AUGUST. YOU KNOW, AUGUST 23RD, LET'S SAY, OR EVEN  
15 POTENTIALLY AUGUST 16TH. AND, YOU KNOW, MAYBE THAT I DON'T  
16 NEED A HEARING ON IT, I CAN JUST DECIDE IT ON THE PAPERS. I  
17 THINK THAT'S QUITE POSSIBLE ACTUALLY DEPENDING ON HOW  
18 COMPLICATED OR SIMPLE THE PARTIES' POSITIONS ARE.

19 BUT THAT WOULD BE MY TENTATIVE INCLINATION, BUT I'M HAPPY  
20 TO HEAR FROM -- I MEAN MAYBE, MAYBE IT'S THE DEFENDANTS ARE  
21 THE MOST LIKELY ONES TO BALK AT THAT, SO I'LL HEAR FROM YOU.

22 **MR. SNYDER:** THANK YOU, JUDGE. I APPRECIATE IT.  
23 IT'S ORIN SNYDER.

24 YOUR HONOR, WE BELIEVE, AS I THINK YOU ANTICIPATE, THAT A  
25 BRIEFING ON THAT SCHEDULE IS NEITHER EFFICIENT NOR FAIR FOR

1 FACEBOOK NOR SENSIBLE UNDER THE CIRCUMSTANCES FOR THE  
2 FOLLOWING REASONS:

3 FIRST, OBVIOUSLY, THE STANDARD FOR WHETHER DISCOVERY  
4 SHOULD OR SHOULD NOT BE STAYED WHEN A MOTION TO DISMISS IS  
5 CONTEMPLATED IS WHETHER THE MOTION WOULD BE POTENTIALLY  
6 DISPOSITIVE OF THE ENTIRE CASE OR WHETHER IT WILL  
7 SUBSTANTIALLY NARROW THE CASE SUCH THAT IT CAN BE DECIDED  
8 EITHER WITHOUT DISCOVERY -- EITHER SUCH THAT THERE IS NO  
9 DISCOVERY NECESSARY BECAUSE THE CASE NO LONGER EXISTS AND  
10 DISMISSED, OR THE SCOPE OF DISCOVERY WOULD BE SUBSTANTIALLY  
11 NARROWED. WE BELIEVE THAT FACEBOOK CAN'T REASONABLY ADDRESS  
12 THIS STANDARD UNTIL PLAINTIFFS FILE A CONSOLIDATED COMPLAINT.

13 AND WE HAVE SEVERAL RELATED CONCERNS. THE FIRST CONCERN  
14 IS AT THE CASE MANAGEMENT CONFERENCE, THE PLAINTIFFS INDICATED  
15 THAT THEY INTEND TO EXPAND THE FACTUAL ALLEGATIONS IN THE CASE  
16 TO INCLUDE NEW PARTIES, AND AS A RESULT, ADDITIONAL THEORIES  
17 OF LIABILITY.

18 UP UNTIL NOW THE ALLEGATIONS IN THE 37 -- OR HOWEVER MANY  
19 COMPLAINTS THERE ARE, LARGELY FOCUSED ON CAMBRIDGE ANALYTICA'S  
20 ALLEGED UNAUTHORIZED ACCESS, BUT DURING THE MEET AND CONFER WE  
21 HAD THIS WEEK WITH LEAD COUNSEL, THEY INDICATED THAT THEY ARE  
22 PLANNING TO ADD NEW FACTUAL ALLEGATIONS BASED ON ANY NEWS  
23 DEVELOPMENTS BETWEEN NOW AND SEPTEMBER 21ST, THE DATE THEIR  
24 CONSOLIDATED COMPLAINT IS DUE TO BE FILED.

25 THEY ALSO INDICATED THAT THE CONSOLIDATED AMENDED

1 COMPLAINT WOULD INCLUDE SOME SUBSET OF THE 37 CAUSES OF ACTION  
2 IDENTIFIED IN PLAINTIFFS' CASE MANAGEMENT STATEMENT.

3 SO, UNTIL THESE ISSUES ARE RESOLVED, THAT IS, THE NATURE  
4 OF THE CASE ITSELF, WHAT CLAIMS ARE IN, WHAT CLAIMS ARE OUT,  
5 WHAT THEORIES OF LIABILITY ARE ASSERTED, WHAT THEORIES OF  
6 LIABILITY ARE NOT ASSERTED, WHAT THE FACTUAL CONSTELLATION OF  
7 THE CASE IS, FACEBOOK WILL BE REQUIRED REALLY TO GUESS AS TO  
8 THE FACTUAL ALLEGATIONS AND CAUSES OF ACTION IN A CONSOLIDATED  
9 COMPLAINT.

10 OTHERWISE WE WOULD HAVE TO, ON YOUR HONOR'S SCHEDULE,  
11 ADDRESS WHY FACEBOOK'S MOTION TO DISMISS WILL BE DISPOSITIVE  
12 ALL 37 DIFFERENT CAUSES OF ACTION ACROSS 30 DIFFERENT  
13 PLEADINGS, AS ALLEGATIONS VARY FROM ONE TO THE OTHER. AND SO  
14 ESSENTIALLY WE WOULD BE FILING OUR MOTION TO SAY KIND OF  
15 BLINDFOLDED WITH ONE HAND BEHIND OUR BACK.

16 I THINK EVERYONE RECOGNIZES THE NEED FOR A CONSOLIDATED  
17 COMPLAINT. THE PLAINTIFFS, IN OUR MEET AND CONFER, SUGGESTED  
18 THAT THE CORE OF THE ALLEGATIONS IS CLEAR ACROSS THE  
19 COMPLAINTS WHEN WE INQUIRED, BUT COUNSEL WAS UNABLE TO  
20 ARTICULATE PRECISELY WHAT THAT CORE WAS. AND ESSENTIALLY WHAT  
21 MS. WEAVER SAID ON THE MEET AND CONFER IS THAT THE CASE  
22 ADDRESSES SITUATIONS, MEANING THEY ARE CONSOLIDATED --

23 (SIMULTANEOUS COLLOQUY.)

24 **THE COURT:** IF I CAN JUST INTERRUPT YOU FOR A MINUTE.

25 **MR. SNYDER:** SURE.

**THE COURT:** I'M NOT INTERESTED IN HEARING WHAT ONE PERSON SAID --

**MR. SNYDER:** ALL RIGHT.

**THE COURT:** -- AND WHAT ANOTHER PERSON SAID ON A MEET  
AND CONFER. I'M HAPPY TO HEAR FROM THEM NOW THOUGH --

**MR. SNYDER:** WHAT --

(SIMULTANEOUS COLLOQUY.)

**MR. SNYDER:** WHAT I MEANT TO SAY, YOUR HONOR --

**THE COURT:** BUT BEFORE I HEAR FROM THEM, I MEAN WHAT  
I ASK YOU IS, I UNDERSTAND -- I HAVE A SENSE FOR WHAT  
DOCUMENTS ARE GOING TO BE FOR WHY DISCOVERY SHOULD NOT...  
RD NOW, BUT I GUESS I'M STILL NOT FULLY GRASPING WHY  
K WE SHOULD WAIT UNTIL AFTER THE CONSOLIDATED AMENDED  
T IS FILED --

**MR. SNYDER:** OKAY --

**THE COURT:** -- BEFORE WE EVEN LITIGATE WHETHER --

**MR. SNYDER:** SURE --

**THE COURT:** -- DISCOVERY CAN PROCEED ON A LIMITED

**MR. SNYDER:** LET ME BE CLEAR THEN, YOUR HONOR.

THE STANDARD FOR WHETHER A STAY IS APPROPRIATE IS WHETHER OUR MOTION TO DISMISS WOULD BE POTENTIALLY DISPOSITIVE OF THE OPERATIVE COMPLAINT. THEREFORE, WE WOULD NEED TO TETHER OUR ARGUMENTS TO THE OPERATIVE COMPLAINT.

**THE COURT:** UH-HUH.

1                   **MR. SNYDER:** RIGHT NOW THERE IS NO OPERATIVE  
2 COMPLAINT. WE THINK IT'S UNFAIR AND ILLOGICAL FOR US TO FILE  
3 A MOTION TO STAY DISCOVERY ON A COMPLAINT THAT HAS NOT YET  
4 BEEN FILED.

5                   **THE COURT:** OKAY.

6                   **MR. SNYDER:** WE WOULD BE PREPARED TO FILE OUR MOTION  
7 TO STAY PROMPTLY AFTER THE FILING OF THE CONSOLIDATED  
8 COMPLAINT.

9                   SO THE SCHEDULE THAT WE HAVE PROPOSED, WHICH WE THINK IS  
10 FAIR AND EFFICIENT TO US, IS THAT THE CONSOLIDATED AMENDED  
11 COMPLAINT WOULD BE FILED ON SEPTEMBER 21 PURSUANT TO THE CASE  
12 MANAGEMENT SCHEDULE, AND THEN WE WOULD TWO WEEKS LATER FILE  
13 OUR MOTION TO STAY, WHICH WOULD GIVE US 14 CALENDAR DAYS TO  
14 STUDY THE OPERATIVE COMPLAINT AND TETHER OUR ARGUMENTS TO THE  
15 OPERATIVE COMPLAINT AND WHY WE BELIEVE THAT COMPLAINT SHOULD  
16 BE DISMISSED.

17                   BECAUSE THAT COMPLAINT DOESN'T EXIST YET, WE WOULD HAVE TO  
18 GUESS --

19                   **THE COURT:** OKAY.

20                   **MR. SNYDER:** -- AS TO WHAT THAT COMPLAINT WOULD BE,  
21 AND YOUR HONOR WOULD BE ISSUING A DECISION ON A STAY MOTION  
22 THAT FRANKLY IS AMORPHOUS.

23                   AND SO WHAT WE WOULD LIKE TO DO IS, AGAIN, TAKE TWO WEEKS;  
24 THAT THAT SCHEDULE IS NOT MUCH MORE DELAYED THAN THE ONE YOUR  
25 HONOR IS PROPOSING, MAYBE SIX WEEKS OFF, BUT WE THINK IT GIVES

1 US --

2                   **THE COURT:** THE ONLY -- THE DOWNSIDE TO THAT IS THAT  
3 WHAT I'M WORRIED IS GOING TO HAPPEN IS THIS COMPLAINT WILL BE  
4 FILED ON SEPTEMBER 21ST. WE WILL HAVE LITIGATION ON WHETHER  
5 DISCOVERY CAN GO FORWARD. IF I CONCLUDE THAT DISCOVERY ON A  
6 LIMITED BASIS SHOULD BE ALLOWED TO GO FORWARD, THEN WE'RE  
7 GOING TO HAVE BRIEFING ON THE MOTION TO DISMISS AND THERE'S  
8 GOING TO BE SOME DISCOVERY. AND THE, YOU KNOW, THE PLAINTIFFS  
9 MAY WISH TO AMEND -- YOU KNOW, THEY MAY WISH TO SEEK LEAVE TO  
10 AMEND THEIR COMPLAINT YET AGAIN IN RESPONSE TO SOME OF YOUR  
11 ARGUMENTS ON THE MOTION TO DISMISS, AND WE'RE GOING TO PUSH  
12 THINGS BACK EVEN FURTHER.

13                   THAT'S WHY I'M WONDERING IF THERE'S SOME LIMITED DISCOVERY  
14 THAT CAN BE DONE, YOU KNOW, AHEAD OF TIME.

15                   BUT -- BUT LET ME ASK THE PLAINTIFFS, I MEAN, HOW MUCH  
16 DOES IT MATTER TO YOU WHETHER WE ADJUDICATE THE QUESTION OF  
17 WHETHER LIMITED DISCOVERY CAN GO FORWARD, YOU KNOW, IN AUGUST  
18 VERSUS, YOU KNOW, SEPTEMBER OR OCTOBER? HOW IMPORTANT IS THAT  
19 TO YOU? BECAUSE IF YOU'RE --

20                   **MR. LOESER:** YOUR HONOR, THIS IS DEREK LOESER.

21                   **THE COURT:** SORRY. IF YOU ARE OKAY --

22                   **MR. LOESER:** SORRY.

23                   **THE COURT:** -- WITH DOING IT IN SEPTEMBER OR OCTOBER,

24 IF BOTH SIDES ARE OKAY WITH THAT, THEN I WOULDN'T... I

25 WOULDN'T WANT -- I WOULDN'T UPSET THAT APPLE CART.

1                   **MR. LOESER:** THIS IS DEREK LOESER. I DID DROP OFF  
2 THE CALL FOR A MINUTE. MY LINE WENT DEAD. I THINK I HAVE A  
3 PRETTY GOOD IDEA WHAT MOST OF THE ARGUMENT WAS BASED ON THE  
4 PARTS THAT I HEARD.

5                   BUT I WILL TELL YOU, WE DO THINK IT'S A BIG DEAL. WE ARE  
6 NOT OKAY WITH PUSHING OFF THE STAY MOTION.

7                   IF YOU JUST LOOK AT WHAT NORMALLY HAPPENS IN CLASS, IN MDL  
8 CASES IN THIS DISTRICT AND ELSEWHERE, BUT EVEN JUST LOOKING AT  
9 THIS DISTRICT, IN *CHRYSLER-DODGE*, *CLEAN DIESEL*, IN *ANTHEM*, IN  
10 *SINGH VERSUS GOOGLE*, *LITHIUM ION BATTERIES*, IN *APPLE DEVICE*  
11 *PERFORMANCE*, AND MANY OTHER CASES, DISCOVERY, EITHER FULL OR  
12 SOME LIMITED DISCOVERY WAS ALLOWED OUT OF THE GATE.

13                  AND SO THE RULE THAT COUNSEL IS SUGGESTING WHICH YOU CAN'T  
14 DO DISCOVERY UNTIL AFTER THE COMPLAINT IS FILED AND THEN YOU  
15 ADJUDICATE THE STAY MOTION LATER IS OBVIOUSLY NOT THE STANDARD  
16 PRACTICE.

17                  **THE COURT:** BUT THERE IS --

18                  **MR. LOESER:** YOUR HONOR --

19                  **THE COURT:** -- SOMETHING TO -- I MEAN, I WAS SORT OF  
20 GLAD TO HEAR THAT YOU, YOU KNOW, THAT YOU ALL ARE APPARENTLY  
21 TALKING ABOUT INCLUDING ONLY A SUBSET OF CLAIMS IN THE  
22 CONSOLIDATED COMPLAINT.

23                  I ASSUME BOTH -- JUST TO TAKE A TIME OUT ON THIS  
24 DISCUSSION AND FLIP TO SOMETHING ELSE REAL QUICK, HAVE YOU ALL  
25 BEEN RESEARCHING THE QUESTION THAT WE TALKED ABOUT LAST TIME

1       ABOUT WHETHER -- LIKE HOW YOU DEAL WITH THE STRAY CLAIMS IF  
2       THE LEAD COUNSEL DECIDES TO ASSERT ONLY A SUBSET OF THE CLAIMS  
3       IN THE CONSOLIDATED AMENDED COMPLAINT? YOU JUST PUT THE  
4       REMAINING CLAIMS ASIDE FOR NOW AND DECIDE IN THE END HOW TO  
5       DEAL WITH THEM IN THE MDL PROCEEDINGS AT A LATER TIME?

6                   **MS. WEAVER:** GOOD AFTERNOON, YOUR HONOR. THIS IS  
7       LESLEY WEAVER.

8                   WE HAVE LOOKED INTO THIS. I DON'T -- I CAN'T NOT CONFIRM  
9       THAT WE HAVE REACHED A DEFINITIVE SOLUTION, BUT EVEN IN THE  
10       HEARING, THE PREVIOUS HEARING THAT WE HAD LAST WEEK, WE DIDN'T  
11       HAVE OPPORTUNITY -- OR AT LEAST I DIDN'T FULLY ADDRESS IT, BUT  
12       WE DID RECENTLY, FOR EXAMPLE, IN *INDUCTORS*, THE FIRST STEP IS  
13       THAT A LEADERSHIP ORDER WOULD BE ENTERED, WHICH WOULD DEFINE  
14       THE POWERS, DUTIES, AND RESPONSIBILITIES OF CLASS COUNSEL.

15                  SO, FOR EXAMPLE, IN THE *INDUCTORS* ACTION, THE KIND OF  
16       DUTIES THAT WERE DESCRIBED INCLUDED THE AUTHORITY TO DRAFT ANY  
17       AMENDED COMPLAINTS AND IDENTIFY DEFENDANTS TO BE NAMED AND  
18       CLAIMS TO BE ASSERTED, TO ENTER INTO TOLLING AGREEMENTS WITH  
19       ANY POTENTIAL DEFENDANTS, INCLUDING ANY PREVIOUSLY NAMED  
20       DEFENDANT NOT NAMED, TO SELECT CLASS REPRESENTATIVES, ET  
21       CETERA, AND THEN I THINK WE HAVE NOT YET HAD SUFFICIENT TIME  
22       REALLY TO ANALYZE THE QUESTION THAT YOUR HONOR WAS POSING  
23       ABOUT WHAT HAPPENS TO THOSE CLAIMS SINCE THEY ARE NOT PLED  
24       NOW.

25                  I THINK IT MERITS A LITTLE FURTHER RESEARCH AND PERHAPS

1 SOME CONVERSATION ON OUR END.

2 **THE COURT:** OKAY. IN ANY EVENT, IT DOES STRIKE ME  
3 THOUGH -- WHAT I WAS SAYING TO MR. LOESER UNTIL I INTERRUPTED  
4 MYSELF IS THAT IT DOES STRIKE ME THAT MR. SNYDER HAS A POINT  
5 THAT, YOU KNOW, YOU HAVE A POINT ABOUT WANTING TO GET MOVING,  
6 AT LEAST ON SOME LIMITED DISCOVERY QUICKLY. MR. SNYDER HAS A  
7 POINT THAT IF THEY'RE ASKED TO FILE A MOTION TO STAY  
8 DISCOVERY, YOU KNOW, KIND OF IN THE DARK IN THE NEXT WEEK OR  
9 SO, IT MIGHT BE A LITTLE UNFAIR TO THEM.

10 SO WHY DON'T WE JUST -- WHAT IF -- TO ADDRESS BOTH OF  
11 THOSE CONCERNS, WHAT IF WE HAD THE PLAINTIFFS START WITH A  
12 REQUEST FOR DISCOVERY AND THE -- AND FACEBOOK COULD FILE A  
13 RESPONSE TO THAT. AND THEN -- THAT YOU'VE SORT OF SET THE  
14 TABLE EXPLAINING WHAT YOU WANT AND WHY YOU WANT IT AND WHY IT  
15 WOULD GO TO THE CORE OF WHAT YOU WILL BE ALLEGING IN YOUR  
16 AMENDED COMPLAINT, AND THEN THEY CAN RESPOND TO IT, AND I CAN  
17 DECIDE IT PROMPTLY?

18 **MR. SNYDER:** YOUR HONOR, THIS IS MR. SNYDER. IF I  
19 CAN BE HEARD.

20 **THE COURT:** I WAS JUST ASKING MR. LOESER IF HE  
21 FELT --

22 **MR. SNYDER:** I'M SORRY.

23 **THE COURT:** -- IT MADE SENSE.

24 **MR. SNYDER:** I'M SORRY, JUDGE.

25 **THE COURT:** THAT'S OKAY.

1                   **MR. LOESER:** YOUR HONOR, I THINK THAT FOR ONE, YOU  
2                   SORT OF READ OUR MINDS. BECAUSE SHORTLY BEFORE THIS CALL, WE  
3                   DID SEND OVER TO DEFENSE COUNSEL A LIST OF INITIAL DISCOVERY,  
4                   TOOK THE REQUEST OR THE ITEMS THAT WERE IN THE CASE MANAGEMENT  
5                   REPORT, WE NARROWED THEM IN SOME RESPECTS AND WE ADDED A  
6                   COUPLE MORE DISCRETE QUESTIONS. AND WE CAN CERTAINLY COMPLETE  
7                   THE PROCESS OF CONFERRING WITH THEM ON THAT LIST.

8                   MY ONE CONCERN ABOUT THE APPROACH, AND MAYBE THIS IS JUST  
9                   A QUESTION OF HOW IT'S DONE, IS THAT, YOU KNOW, IN OUR VIEW,  
10                  IN THE NORMAL COURSE, THIS IS INFORMATION, DISCOVERY STARTS  
11                  RIGHT AWAY. AND I THINK IT WOULD BE UNFORTUNATE IF THE  
12                  BURDENS GOT SHIFTED SUCH THAT WE ARE ARGUING --

13                  **THE COURT:** YEAH -- NO --

14                  **MR. LOESER:** -- FOR ANY DISCOVERY --

15                  **THE COURT:** IT'S NOT ABOUT SHIFTING THE BURDEN. IT'S  
16                  JUST ABOUT FIGURING OUT THE MOST EFFICIENT WAY TO TEE UP THE  
17                  ISSUE.

18                  AND IT STRIKES ME THAT IF YOU FILE A BRIEF AND, YOU KNOW,  
19                  WE CALL IT A -- DOESN'T MATTER WHAT WE CALL IT, REQUEST FOR  
20                  DISCOVERY OR WHATEVER, WE -- YOU KNOW, YOU CAN LAY OUT IN YOUR  
21                  BRIEF WHAT YOU WANT AND WHY YOU WANT IT AND WHAT YOU DON'T  
22                  WANT YET AND WHY YOU DON'T NEED IT YET.

23                  AND THEN THEY CAN, YOU KNOW, YOU COULD SAY FILE THAT IN  
24                  SEVEN DAYS, AND THEN THEY CAN FILE A RESPONSE IN SEVEN DAYS,  
25                  AND WE CAN SCHEDULE A HEARING IF YOU ALL WANT, OR WE CAN -- OR

1 I CAN DECIDE IT ON THE PAPERS.

2 WHAT WOULD BE WRONG WITH THAT?

3 **MR. LOESER:** I DON'T THINK THERE WOULD BE ANYTHING  
4 WRONG WITH THAT AS LONG AS -- AND I THINK THIS WOULD BE YOUR  
5 PLAN AS WELL, IT HAPPENS QUICKLY. IT WOULD BE -- IT'S ANOTHER  
6 WAY OF MEETING AND CONFERRING WITH THE UNDERSTANDING THAT THE  
7 END RESULT MAY BE THE INFORMATION IS PROVIDED OR THAT IT'S  
8 NOT.

9 WHAT WE WOULD LIKE TO AVOID IS SOME ELONGATED MOTIONS  
10 PRACTICE OVER INFORMATION THAT FRANKLY WE THINK IS IMPORTANT  
11 TO GET NOW. SO IF WE CAN -- AND I THINK WE CAN IF WE CAN  
12 STRUCTURE THAT BRIEFING SO IT HAPPENS VERY QUICKLY --

13 **THE COURT:** YEAH, YOU CAN --

14 **MR. LOESER:** PERHAPS EVEN --

15 **THE COURT:** YOU COULD FILE YOUR BRIEF ON THE 8TH AND  
16 FACEBOOK CAN FILE ITS BRIEF ON THE 15TH, AND THEN WE CAN  
17 SCHEDULE A HEARING IF YOU ALL -- IF YOU WANT FOR THE 23RD.  
18 ALTHOUGH, AS I SAID, I COULD -- I MAY JUST DECIDE IT ON THE  
19 PAPERS. I'M NOT SURE IT'S NECESSARY TO EVEN SCHEDULE A  
20 HEARING, ALTHOUGH I WOULD BE HAPPY TO SCHEDULE ONE IF PEOPLE  
21 WANT IT -- IF ANYBODY WANTED WITH THE UNDERSTANDING THAT I MAY  
22 DECIDE IT IN ADVANCE ON THE PAPERS.

23 **MR. SNYDER:** YOUR HONOR, IT'S MR. SNYDER. MAY I BE  
24 HEARD ON THAT?

25 **THE COURT:** SURE.

1                   **MR. SNYDER:** SO WE APPRECIATE THE SUGGESTION, BUT THE  
2 THAT DOESN'T NECESSARILY ADDRESS OUR PREDICAMENT BECAUSE  
3 WHETHER THEY STYLE IT AS A DISCOVERY REQUEST OR A MINI BRIEF,  
4 THE KEY IS, THOUGH, WE STILL DON'T KNOW THEIR CAUSES OF  
5 ACTION.

6                   **THE COURT:** AND YOU CAN --

7                   **MR. SNYDER:** THEIR THEORY OF THE CASE.

8                   **THE COURT:** IF THAT'S A REAL ISSUE, YOU CAN MAKE THAT  
9 ARGUMENT IN YOUR BRIEF THAT YOU WOULD FILE ON THE 15TH.

10                  **MR. SNYDER:** ALL RIGHT.

11                  THE OTHER POINT IS, YOUR HONOR, WE HAVE SUGGESTED THAT  
12 THEY TAKE 30 DAYS TO FILE THEIR CONSOLIDATED COMPLAINT. THEY  
13 ASKED FOR 60 DAYS. SO IN SOME SENSE, THE DELAY OR  
14 PROLONGATION OF THIS PROCESS REALLY IS A FUNCTION OF THE TIME  
15 THEY ASKED FOR THEIR CONSOLIDATED PLEADING.

16                  IF THEY WANT TO FILE THEIR CONSOLIDATED PLEADING EARLIER,  
17 WE WILL TWO WEEKS AFTER THE FILING OF THAT PLEADING, WE'LL  
18 PROMPTLY MOVE FOR A STAY. SO ONE WAY TO ADDRESS IT --

19                  **THE COURT:** I UNDERSTAND. I DON'T REALLY CARE WHOSE  
20 FAULT IT IS, I WANT TO MAKE SURE WE MOVE THIS THING ALONG AT A  
21 REASONABLY PROMPT PACE.

22                  AND I THINK THAT GIVEN WHERE WE ARE NOW AND GIVEN THE  
23 DEADLINE FOR FILING THE AMENDED COMPLAINT, THE BEST WAY TO  
24 MOVE THINGS ALONG AT A REASONABLY PROMPT PACE IS TO ADOPT THE  
25 SCHEDULE THAT I'VE JUST SUGGESTED.

1 IT MAY VERY WELL BE THAT I DETERMINE THAT NO DISCOVERY  
2 SHOULD BE ALLOWED OR A MORE LIMITED SUBSET OF DISCOVERY SHOULD  
3 BE ALLOWED THAN WHAT THE PLAINTIFFS ARE ASKING FOR, AND IF SO,  
4 THEN WE'LL BE -- THAT WILL BE HOW WE PROCEED.

5 BUT I THINK LET'S TEE IT UP QUICKLY AND LET'S DO IT IN A  
6 WAY WHERE THE PLAINTIFFS ARE FIRST REQUIRED TO PUT THEIR CARDS  
7 ON THE TABLE, SO TO SPEAK, AND WE WILL HAVE THE PLAINTIFFS  
8 FILE A REQUEST FOR DISCOVERY ON AUGUST 8TH, AND WE WILL HAVE  
9 THE FACEBOOK DEFENDANTS FILE THEIR RESPONSE ON AUGUST 15TH.

10 AND WOULD ANYBODY LIKE ME TO SCHEDULE A HEARING ON  
11 AUGUST 23RD OR WOULD YOU RATHER I JUST DECIDE IT ON THE  
12 PAPERS? EVEN IF WE SCHEDULE A HEARING FOR AUGUST 23RD, I  
13 MIGHT END UP DECIDING IT ON THE PAPERS BEFOREHAND. BUT IF YOU  
14 WANT --

15 **MR. SNYDER:** YOUR HONOR, IT'S MR. SNYDER.

16 I'M GOING TO BE ISTANBUL OFFICIATING A WEDDING ON THE  
17 23RD.

18 **THE COURT:** YOU HAVE MR. LIPSHUTZ. YOU HAVE PLENTY  
19 OF --

20 **MR. SNYDER:** YEAH.

21 **THE COURT:** -- BUT IF YOU ALL WOULD --

22 **MR. SNYDER:** NO. WE CAN SCHEDULE A HEARING.

23 **THE COURT:** SORRY?

24 **MR. LOESER:** YOUR HONOR, IF I CAN MAKE -- THIS IS  
25 DEREK LOESER -- A PROPOSAL.

**THE COURT:** UNLESS IT'S MR. LIPSHUTZ'S HEARING -- I  
MEAN WEDDING.

(LAUGHTER.)

**MR. LIPSHUTZ:** I'M HAPPILY MARRIED FOR 12 YEARS, YOUR HONOR.

**MR. LOESER:** YOUR HONOR, WHAT I WAS -- THIS IS DEREK LOESER.

IF YOUR HONOR -- HOW ABOUT THIS: WE SUBMIT THE PAPERS.

IF YOUR HONOR BELIEVES IT IS NECESSARY TO HAVE A HEARING, WE WILL SCHEDULE ONE. BUT I SURE WOULDN'T WANT TO SLOW THINGS DOWN BY WAITING FOR A HEARING IF THE COURT ALREADY HAS A CLEAR IDEA OF WHAT IT'S GOING TO DO.

**THE COURT:** THAT'S FINE. YOU ALL HAVE LOTS OF MONEY,  
SO BUY REFUNDABLE TICKETS TO SAN FRANCISCO AND WE'LL SCHEDULE  
THE HEARING FOR THE 23RD AT 10:00 A.M.

BUT I'M GUESSING IT'S ABOUT 50/50 WHETHER WE'LL NEED THAT HEARING AND I MAY DECIDE IT ON THE PAPERS BEFORE THAT.

MR. LOESE: OKAY.

**THE COURT:** AND THEN LET'S SEE. IS THERE ANYTHING ELSE ANYBODY WOULD LIKE TO DISCUSS NOW?

**MR. SNYDER:** NOTHING FROM THE DEFENDANTS, YOUR HONOR.

MR. LOESER: YOUR HONOR, I THINK MS. WEAVER, IF SHE'S STILL ON THE LINE I BELIEVE SHE IS -- THERE ARE SOME CASE MANAGEMENT ISSUES SHE WANTS TO INTRODUCE, AND I THINK MS. WEAVER IS GOING TO COVER THOSE.

1                   **THE COURT:**   OKAY.

2                   **MS. WEAVER:**   THERE WAS A FEW ISSUES BRIEFLY.

3                   ONE IS, IN ACCORDANCE WITH THE LEADERSHIP ORDER, WE WILL  
4                   ALSO ADDRESS TIMEKEEPING MATTERS AND CASE MANAGEMENT ISSUES.

5                   **THE COURT:**   SO YOU'RE GOING TO SUBMIT A PROPOSED  
6                   LEADERSHIP ORDER?

7                   **MS. WEAVER:**   YES.

8                   **THE COURT:**   GREAT.

9                   **MS. WEAVER:**   FOR YOUR CONSIDERATION.   OKAY.

10                  AND THEN THE FINAL ISSUE IS WE DID MENTION IN THE LAST  
11                  HEARING AN EARLY MEET AND CONFER ON ESI AND PRESERVATION  
12                  MATTERS.   AND WE UNDERSTOOD FROM MR. SNYDER'S COMMENTS THAT  
13                  THERE HAVE BEEN LITIGATION HOLDS ISSUED IN GENERAL.

14                  IN THE CMC STATEMENT THAT WAS PUT BEFORE COLLECTIVELY, WE  
15                  PROPOSED A 26(F), WHICH WOULD HAVE BEEN TWO WEEKS FROM LAST  
16                  FRIDAY.   IF WE WANTED TO PARE IT DOWN AND JUST DISCUSS ESI, WE  
17                  WOULD BE AMENABLE TO THAT UNTIL THIS DISCOVERY ISSUE IS  
18                  RESOLVED, BUT I THINK THERE ARE SOME CONCERNs AROUND  
19                  PRESERVATION THAT IT MIGHT BE HELPFUL TO HAVE THE PARTIES  
20                  DISCUSS JUST AS THE GUIDELINES IN THE NORTHERN DISTRICT  
21                  SUGGEST.

22                  SO THAT'S SOMETHING THAT WE WERE LOOKING FOR SOME GUIDANCE  
23                  ON.

24                  **THE COURT:**   WELL, YEAH.   I MEAN, I CERTAINLY THINK  
25                  THAT IT IS APPROPRIATE FOR YOU ALL TO -- AND I'M... I AM NOT

1 AN ESI EXPERT. NOT EVEN CLOSE. BUT I CERTAINLY DON'T THINK  
2 THERE'S ANYTHING WRONG WITH, YOU KNOW, HAVING YOU ALL MEET AND  
3 CONFER ON ESI AND FOLLOWING THE NORTHERN DISTRICT GUIDANCE ON  
4 THAT.

5 **MS. WEAVER:** OKAY. THANK YOU, YOUR HONOR.

6 AND THE ONLY OTHER ISSUES, WE'RE GOING TO BE DRAFTING ALSO  
7 A PRESERVATION CONFIDENTIALITY ORDER. WE'LL SUBMIT THAT TO  
8 THE DEFENDANTS AND HOPEFULLY WE WILL BE ABLE TO NEGOTIATE THAT  
9 AND GET THOSE LOGISTICAL ORDERS ENTERED AND SUBMITTED TO YOU  
10 FOR YOUR CONSIDERATION SHORTLY.

11 **THE COURT:** SHOULD I -- SHALL I SUGGEST A DEADLINE  
12 FOR SOME OF THESE THINGS LIKE THE PROPOSED LEADERSHIP ORDER,  
13 THE CONFIDENTIALITY ORDER, MEETING AND CONFERRING ON ESI? DO  
14 YOU WANT TO SET THAT -- SHALL WE SET DEADLINES?

15 **MS. WEAVER:** ABSOLUTELY. YES.

16 **THE COURT:** WHY DON'T I GIVE YOU A DEADLINE OF  
17 AUGUST 10TH FOR SUBMITTING THE LEADERSHIP ORDER AND THE  
18 CONFIDENTIALITY ORDER.

19 **MS. WEAVER:** OKAY.

20 **THE COURT:** AND THEN DEADLINE FOR YOU ALL TO MEET AND  
21 CONFER ON ESI, WHEN SHOULD THAT BE?

22 **MS. WEAVER:** WE WERE PROPOSING TWO WEEKS FROM FRIDAY,  
23 WHICH WOULD FALL RIGHT IN THE SAME TIME FRAME. SAY  
24 AUGUST 10TH.

25 **THE COURT:** YOU WANT TO SAY THE 10TH ALSO?

1                   **MS. WEAVER:** YES. THAT WOULD BE HELPFUL. THANK YOU.

2                   **THE COURT:** OKAY. ANY PROBLEM WITH THAT FROM  
3 FACEBOOK?

4                   **MR. SNYDER:** NO, YOUR HONOR.

5                   **THE COURT:** OKAY. ALL RIGHT. SO THOSE THREE -- SO  
6 THE PLAINTIFFS' REQUEST FOR DISCOVERY IS DUE THE 8TH,  
7 FACEBOOK'S RESPONSE IS DUE THE 15TH, HEARING ON -- IF  
8 NECESSARY, WILL BE ON THE 23RD. PLAN ON THE HEARING TAKING  
9 PLACE UNLESS YOU HEAR FROM ME. AND THE DEADLINE FOR THE  
10 PROPOSED LEADERSHIP ORDER, CONFIDENTIALITY ORDER, AND FOR  
11 MEETING AND CONFERRING ON ESI IS AUGUST 10TH.

12                  ANYTHING ELSE WE CAN DISCUSS RIGHT NOW?

13                  **MS. WEAVER:** NO, YOUR HONOR.

14                  **MR. SNYDER:** NO, YOUR HONOR. THANK YOU.

15                  **THE COURT:** GREAT. THANK YOU VERY MUCH.

16                  **MR. LOESER:** THANK YOU.

17                  **MS. WEAVER:** THANK YOU, YOUR HONOR.

18                  (PROCEEDINGS CONCLUDED AT 2:06 P.M.)

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22

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1  
2 **CERTIFICATE OF TRANSCRIBER**  
3

4 I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
5 TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF  
6 THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE  
7 U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE  
8 PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN  
9 THE ABOVE MATTER.

10 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED  
11 TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH  
12 THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT  
13 FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE  
14 ACTION.

15   
16 \_\_\_\_\_

17 DIANE E. SKILLMAN, TRANSCRIBER

18 THURSDAY, AUGUST 9, 2018

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